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January 12, 2017

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Room TW-A325
Washington, DC 20554

Re: ***Emergency Petition of Allband Communications Cooperative for Interim Partial Waiver of Part 54.302 Rule and for Increased Per-Line Support***
In the matter of: Connect America Fund, WC Docket No. 10-90
A National Broadband Plan for Our Future, GN Docket No. 09-51
Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135
High-Cost Universal Service Support, WC Docket No. 05-337
Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92
Federal-State Joint Board on Universal Service, CC Docket No. 96-45
Lifeline and Link-Up, WC Docket No. 03-109
Universal Service Reform--Mobility Fund, WT Docket No. 10-208

Dear Ms. Dortch:

Please find enclosed for filing in the lead docket 10-90 the **Emergency Petition of Allband Communications Cooperative for Interim Partial Waiver of the Part 54.302 Rule and for Increased Per-line Support, with supporting Appendices.**

We are also sending a copy of this filing via e-mail to Suzanne Yelen (suzanne.yelen@fcc.gov), Alexander Minard (alexander.minard@fcc.gov), Joe Sorresso (joseph.sorresso@fcc.gov), and to the Commission's copy contractor at fcc@bcpiweb.com.

Respectfully submitted,
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DLK/cd
Atts.

Before the
Federal Communications Commission
Washington, D.C. 20554

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	)	
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Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

EMERGENCY PETITION OF ALLBAND COMMUNICATIONS COOPERATIVE FOR INTERIM PARTIAL WAIVER OF THE PART 54.302 RULE AND FOR INCREASED PER-LINE SUPPORT

Pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, and the Commission's 2011 Order in these dockets[1] and the Commission's July 25, 2012 Waiver Order,[2] and the

[1] Connect America Fund, et al, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (USF/ICC Transformation Order).
[2] Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules, WC Docket no. 10-90, Order, 27 FCC Rcd 8310, Released: July 25, 2012 (Order). The Commission's July 25, 2012 Order granting Allband a 3-year waiver, footnote 36, stated:

> Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waiver a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of

Commission's July 20, 2016 Order,[3] Allband Communications Cooperative (Allband or ACC) respectfully files this Emergency Petition for Interim Partial Waiver of the Part 54.302 Rule and For Increased Per-Line Support above the $250 per-line level imposed by the July 20, 2016 Order.[4] Such an interim waiver is fully consistent with the Commission's July 20, 2016 Order, paragraph 26, which states:

> The Commission is mindful of its obligation to preserve and advance universal service. Consistent with Commission precedent, any determination into the appropriate amount of waiver support will take into account evidence presented by Allband regarding the impact of any support reductions on its ability to continue to serve areas where consumers have no alternatives. [fns omitted] (July 20, 2016 Order, ¶ 26 and 47 U.S.C. § 254(b)(2).

I. AN EMERGENCY PARTIAL INTERIM INCREASE IN ALLBAND'S USF SUPPORT TO $375 PER LINE IS NECESSARY TO COVER ALLBAND'S FIXED COSTS WHICH ARE IRRELEVANT TO AND OUTSIDE OF THE SCOPE OF USAC'S REVIEW

A compelling basis exists to support the Commission's grant of an <u>emergency partial interim waiver</u> to increase ACC's per-line USF support to $375 per line, pending completion of

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overall policy on an individual basis. *WAIT Radio v. FCC,* 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d 1166. In this context, the Commission has made clear that it envision granting waivers "only in those circumstances in which the petitioner can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice services, with no alternative terrestrial providers available to provide voice telephony using the same or other technologies that provide the functionalities required for supported voice service. *USF/ICC Transformation Order*, 26 FCC Rcd at 17840, para 540.

[3] Connect America Fund, et al, WC Docket No. 10-90, Order and Order on Review dated July 20, 2016, ___ FCC Rcd ___ (2016).

[4] This Emergency Petition is supported by the extensive information and financial facts presented in: (1) the attached Affidavit of Allband's Board President, John Reigle (**Appendix** A); (2) the attached Affidavit and attachments of Allband General Manager Ron Siegel (**Appendix B**); (2) the attached Affidavit and attachments of Allband Controller Tammy Veasy (**Appendix C**); (3) the attached Affidavit and attachments of Tim Morrissey of FWA (**Appendix D**); and (4) the attached Affidavit of JSI Director and CPA Christine Duncan (**Appendix E**).

USAC's review and subsequent Commission approval of a further waiver and increase in per-line support above $375 per-line based upon Allband's further supportable costs.

The $375 per line support requested in this emergency petition covers "fixed" costs that have nothing to do with the employee time or affiliate cost allocations assigned for USAC review by the Commission's July 20, 2016 Order. A substantial portion of ACC's costs (that exceed $250 per-line) are not related to operating costs, but instead relate to non-operating costs such as capital investment, depreciation, and taxes relating to ACC only, and thus are not dependent upon the outcome of cost-allocations being reviewed by USAC pursuant to the Commission's July 20, 2016 Order.[5] Allband also asserts that the allocation review being conducted by USAC (with the full cooperation and extensive efforts of Allband) should also ultimately confirm a per-line USF reimbursement significantly in excess of this base $375 per-line support associated with Allband's non-operating costs.

The potential claw-back provision in the Commission's order does not diminish the appropriateness of an emergency increase in ACC's per-line support to $375 at this time. This is because there would be significant offsets to any potential claw-back to reconcile for a significant oversight shortage or FCC calculation error in USF reimbursements that ACC experienced upon implementation of the Commission's 2011 Transformation Order. This shortfall, along with unreimbursed USF support resulting from the Commission's sudden reduction to $250 per-line as

[5] This is established by the attached Affidavit of FWA President and CPA Tim Morrissey (**Appendix D** hereto) which confirms that these non-operating Allband costs equate to a revenue requirement of $375 per-line, an amount far above the $250 per-line cap imposed by the July 20 Order, and to CPA Christine Duncan of JSI (**Appendix E** hereto); Allband discussed this request in advance with representatives of USAC assigned to Allband's compliance review, and submitted an October 5, 2016 formal submission, with attached Memorandum from CPA and FWA President Tim Morrissey, to USAC requesting concurrence in this request for an interim partial emergency increase in per-line support (see Attachment 5 to the Affidavit of General Manager Ronald Siegel (**Appendix B**, hereto) and paragraph 10, p 15 of **Appendix B**.

of July 1, 2016, provides more than enough coverage to accommodate any "claw-back" reconciliation (if any) referenced by the Commission in its July 20 Order.[6]

Allband's emergency interim request for a partial increase in per-line USF support above the $250 cap imposed by the July 20 Order also is fully consistent with the remedies provided in the July 20 Order. The July 20 Order provided for a USAC compliance review which was to be conducted on a prompt basis, as suggested by the reference to 3-month deadlines. However, such timelines have turned out to be illusory. The USAC review is open-ended and highly indefinite. The July 20 Order also expressly provided that Allband could petition the Commission for a further waiver. Given the extended time undertaken by the USAC review, and the uncertainty of any completion date, and given the remedy provided for Allband to refile its waiver request, Allband requests the Commission to grant at this time an <u>emergency, partial interim increase</u> in per-line USF support to $375 per line, pending a further prompt increase in per-line support above the $375 per-line level upon completion of the USAC compliance review.

Allband's Petition for an emergency per-line increase in USF reimbursements is also supported by some additional overriding objective benchmark tests that establish that Allband's regulated per-line costs qualifying for reimbursement under the USF program is significantly above the $250 per-line level imposed in the Commission's 2011 rules as a "presumptive level" (as also referenced in the Commission's July 20, 2016 Order). The reality is that Allband's higher capital costs (along with associated depreciation and property tax expenses) result from the fact that Allband is a recent new entity (establishing a wholly new broadband capable network in an

[6] The attached Affidavit of ACC's General Manager Ron Siegel, **Appendix B**, paragraph 13, p 18, calculates this initial shortfall in the amount of $124,420 for 2011 and $110,102 related to 2012, and the loss of USF support under the July 20, 2016 Order since July 1, 2016. Moreover, the Commission's July 20, 2016 Order provided for a latter reconciliation review concerning a claw-back (if any) which process should not be prejudged at this time.

unserved territory that had never had any communications services previously).[7] Notably, the $8 million loan from the U.S. Rural Utility Service (RUS), approved for Allband after rigorous review (and long before the existence of Allband Multimedia or AMM), was utilized in its entirety to establish regulated service in accordance with the Act and the USF program.

Another objective benchmark comparison involves the amount of ACC's monthly payments for principal and interest on its RUS loan to establish its wholly regulated network during the period 2006-2011 (wholly aside from and before AMM). This RUS payment obligation equals $54,147.17 per month, which equates to $334 per-line. This is a monthly cash payment obligation which has always been associated with ACC and not AMM.[8]

The direct effect of the Commission's order to drastically cut the ACC support to $250 per-line level is to undercut the financial security for the taxpayer supported loan authorized by a sister federal agency (the RUS) to promote the very objectives and purposes of the USF program.

Moreover, there should be no dispute that the per-line USF support necessary to support Allband's "fixed" regulated costs (in the amount of $375 per line) have nothing to do with employee time or affiliate cost allocations, or other expense allocations being reviewed by USAC pursuant to the Commission's July 20, 2016 Order.

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[7] Allband incurred this investment in reliance upon the USF program established by Congress in the 1996 Amendments to the Act, and this Commission's approval of Allband as an ILEC in 2005, and RUS' approval of a loan in 2005, and the commencement of service to its first customer in 2006, when Allband's then "sunk" investment was far in excess of $250 per line; the costs at this time related to these costs equal $375 per line, wholly aside from any expense allocation or affiliate transaction allocation issues being reviewed by USAC under the Commission's July 20, 2016 order (see Affidavit and attachments of FWA President and CPA Tim Morrissey, **Appendix D** and attached Affidavit of JSI Director Christine Duncan, CPA, **Appendix E** attached hereto).

[8] Affidavit of Tammy Veasy, Allband Controller, attached as **Appendix C**, pp 4-5, and Attachments 1 and 2 thereto, and the RUS loan amortization schedule and payment history attached to her affidavit.

II. THE GRANT OF THIS EMERGENCY PETITION IS NECESSARY TO PREVENT IRREPARABLE HARM TO ALLBAND, ITS CUSTOMERS, AND THE PUBLIC INTEREST

Allband asserts that the prompt grant of this emergency petition and Allband's previous waiver filings[9] is necessary to prevent irreparable harm to Allband, its customers, and the public interest. The continuing revenue reductions caused by the implementation of the part 54.302 rule and the July 20 Order will irreparably harm Allband and its customers by providing insufficient revenues to: (a) continue to provide voice and 911 ILEC services to any of its customers, (b) pay the principal and interest on its existing loan issued by the Rural Utility Service (RUS) based upon the financial security provided by the previously authorized and contemplated USF funding, and (c) continue operations as an ILEC telecommunications carrier in its otherwise unserved territory.[10]

Allband, as a combined entity including ACC and AMM, is rapidly running out of any cash resources or ability to provide services and to pay on its federal RUS loan obligations. This can be ameliorated somewhat by the emergency grant of this petition to increase Allband's per-line support (to meet costs having nothing to do with the USAC compliance review audit) while Allband continues its efforts at cutting costs and modifying its RUS loan, among other actions.

Allband also urges that time is of the essence for additional reasons. Allband has utilized its various limited resources to exhaustively respond to all of USAC's inquiries and requests for

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[9] Allband's previous waiver filings include: (1) Allband's February 2012 waiver petition with supporting attachments; (2) Allband's December 31, 2014 waiver petition with supporting attachments, and supplemental filing with attachments; (3) Allband's November 12, 2015 response to the September 23, 2015 audit issued by Universal Service Administrative Company (USAC), with supporting attachments, and supplemental filings thereto, (4) Allband's June 29, 2016 Emergency Petition of Allband Communications Cooperative for Interim Partial Restoration of its Waiver of the Part 54.302 Rule; and (5) Allband's nine-page handout analysis presented to the FCC staff at meetings held on June 28, 2016.

[10] Affidavit of ACC President John M. Reigle, **Appendix A**, pp 2-3, paragraphs 5-7; Affidavit of ACC General Manager Ron K. Siegel, **Appendix B**, p 8, paragraph 5; Affidavit of ACC Controller Tammy S. Veasy, **Appendix C**, p 4, paragraph 8.

information and data. Yet no known timeframe exists for USAC to complete its review and issue its report. At the same time, Allband has demonstrated that a significantly higher level of per-line USF support is justified based upon the portion of Allband's non-operating costs that have nothing to do with the compliance review being undertaken by USAC (dealing with certain operating or employee time allocations). This justifies and supports Allband's request that the Commission increase Allband's per-line support, such as to $375 per line, on an emergency interim basis, and pending a further FCC Order to address and consider yet additional per-line USF support. Allband also requests the Commission to include a provision in the requested emergency interim waiver order to require USAC to complete and issue its report on a prompt basis.

III. ALLBAND IS COMPLIANT WITH, AND HAS NOT ABUSED, THE COMMISSION'S COST-ALLOCATION AND AFFILIATE TRANSACTION RULES

Allband asserts that it is in compliance with, and has not abused, the Commission's cost allocation and affiliate transaction rules. ACC respects these rules, and has never intentionally departed from them. At the same time, as the Commission itself has recognized in its July 20, 2016 Order (paragraph 13 and fn 46), cost allocation issues can involve to some degree differences in judgment, interpretations, or discretion involving assignment of costs on a direct or common allocation or other basis.

Allband's regulated network was engineered, designed, and constructed starting in 2005, with its first customer being connected in 2006, based upon an $8 million loan granted by the RUS following a very rigorous application process. For each year thereafter, Allband has been the subject of a continuing rigorous annual cost study and audit process required to support and justify its USF reimbursements.

The unregulated subsidiary, AMM, commenced providing service to its first customer in 2012, based upon an outright grant from the RUS to promote the deployment of broadband services in and around the rural area served by ACC. Both ACC and AMM have continued to be subject to rigorous annual cost study and audit requirements ever since.[11] At no time, until the USAC's September 2015 audit report, was there any suggestion that Allband was out of compliance with the Commission's cost allocation or affiliate transactions rules. This confirms that any variance (if any) from the Commission's rules was unintentional, or resulting from differences in judgment or interpretation, or misunderstanding, as to the application of same. No guidance was provided by the FCC Staff or others as to any needed correction, which could have been undertaken on an informal prompt basis.

Secondly, following the completion of the USAC (IAD) audit report (which was provided to the FCC on September 23, 2015 or earlier, but was not provided to ACC until October 13, 2015, ACC promptly reviewed the IAD report and filed a response thereafter on November 12, 2015. Allband thereafter promptly attempted on numerous occasions to engage USAC in a remedial process to better understand and to address the USAC criticisms, but was rebuffed in such efforts up to the issuance of the Commission's July 20, 2016 Order.[12] On and after the July 20 Order, ACC promptly again has sought to engage USAC in a thorough review, which process has consumed major resources of ACC and has not yet resulted in any timely resolution to the USAC review.[13]

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[11] Allband, at significant cost, engaged the services of FWA, an experienced firm in the field, and another accounting firm, JSI, to conduct the cost studies and audits, and to provide guidance on these matters.

[12] Affidavit of ACC General Manager Ronald Siegel, **Appendix B**, pp 14-17, paragraph 10; Affidavit of ACC Controller, Tammy S. Veasy, **Appendix C**, pp 8-14, paragraph 10, and Attachment 6 thereto.

[13] In accordance with the July 2016 Commission Order, Allband has exhaustively and diligently engaged with USAC to clarify and correct any and all accounting matters to ensure compliance. This has involved numerous Allband responses to USAC inquiries, an on-site visit at Allband by USAC, and numerous phone discussions involving USAC, Allband, and Allband's accounting and regulatory consultants (including FWA and JSI). This nearly 7-month effort should confirm that Allband is now in compliance with the Commission's accounting costs.

ACC recognizes that the responsibility for compliance with FCC accounting rules resides with the company. However, notwithstanding engaging at the very beginning of ACC's existence in 2008 professional assistance for completion of cost studies and data submissions, together with audits by certified public accountants, ACC received no indication that it had areas of noncompliance until recently. Moreover, ACC routinely submitted data to USAC and NECA without indications of noncompliance. Once the FCC July 2016 order was released, Allband engaged additional resources, and expertise, such as JSI, to more comprehensively review compliance and development of corrective action plans.

Third, an overriding reality is that the relationship and structure of Allband Communications Cooperative (ACC) and Allband Multimedia (AMM) is unique, a consideration that is relevant to issues raised by the Commission. While the Commission's Notice of Proposed Rulemaking (NOPR), leading to the 2011 Transformation Order, expressed concerns regarding holding company or affiliate abuses, Allband has never been a holding company. ACC has always been a non-profit cooperative in which the customers served are the member-owners. ACC has never been a "carrier" separate from its customers.

AMM is not a separate subsidiary of a profit-making holding company. AMM has always been an unregulated subsidiary of the non-profit ACC. Thus, the financial resources of both entities, ACC and AMM, are being utilized to undertake and promote the goals and objectives of the USF program established by Congress in the 1996 Act (and consistent with the Commission's

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This is confirmed by the attached Affidavit of Allband's General Manager (**Appendix B** hereto), Allband's Controller (**Appendix C** and Attachments 6 and 7 thereto), and Allband's accounting and regulatory consultants from JSI (**Appendix E** hereto), and Attachments 6 and 7 thereto). The affidavit of Allband's Controller (**Appendix C**), includes as attachments 6 and 7, a comprehensive compliance plan and a summary of Allband's extensive efforts at engaging with USAC since the July Order.

2005 Order applicable to Allband, the 2011 Commission's Transformation Order, and the 2012 Waiver Order applicable to Allband).

AMM is a wholly-owned subsidiary of ACC established for provision of nonregulated services included competitive local exchange carrier (CLEC) operations in areas outside of and adjacent to the ACC study area. Creation by cooperative ILECs of wholly owned subsidiaries for provision of nonregulated services is common in order to allow provision of services to customers otherwise not falling under member-sourced revenue. In the case of AMM and ACC, one of the principal undertakings of AMM has been to provide broadband connectivity in areas adjacent to the ACC study area that otherwise were unserved or underserved. For that purpose, ACC and AMM received an outright grant of funds from the RUS Broadband Initiatives Program (BIP) for fiber construction in the AMM service areas. AMM's broadband service thus fulfills national goals similar to universal service goals and certainly those of the BIP.

Notwithstanding the existence of the wholly-owned subsidiary AMM, the operations of AMM and ACC are largely integrated with shared use of employees and resources. This creates the need for application of the FCC accounting safeguards under the Part 32 USOA as a whole and especially Section 32.27, affiliate transactions. This is because of the integrated operations causes the comprehensive existence of "common costs", i.e. costs incurred for the benefit of both ACC and AMM. The existence of common costs benefits both entities. Given the small size of ACC, the ability to share costs with AMM reduces costs, such as general and administrative, that would reside in ACC were it not for allocations to the affiliate AMM. Thus, notwithstanding engendering greater scrutiny for compliance with Section 254(k) of the Communications Act, as Amended, proscribing subsidization of competitive services by noncompetitive services, the addition of AMM operations to ACC enhances ACC's ability to fulfil the goals of universal service, and also provides opportunities to economize on costs consistent with the Commission's 2012 Waiver Order.

Moreover, ACC was funded in 2005-2006 by a taxpayer-funded RUS loan to be supported by the ratepayer-supported USF program. AMM, in turn, was funded by a taxpayer-funded RUS grant, approved in 2010, as part of the programs established by Congress to bolster the economy and to expand the deployment of broadband facilities and services in and around rural areas (which did not have such services). Allband has utilized all resources of both ACC and AMM to meet its obligations and responsibilities under both the RUS loan and grant. This unique context is far different from most or all other situations existing nationally where an investor-owned or privately-owned profit-making enterprise is providing both regulated and unregulated services, via perhaps holding companies and multiple subsidiaries, and where the potential for affiliate transaction or cross-subsidization abuses may exist to enhance private profits through use in part of government funds. In contrast, the combined entities of ACC, and its subsidiary, AMM, do not constitute a profit-making holding company situation. With respect to ACC (and AMM) there exists no profits paid to private owners or investors, or incentives to vary from or abuse the Commission's cost-allocation or affiliate transaction rules.

Given the above unique circumstances, it appears that the FCC is expending sizeable resources, and is requiring ACC to do the same, in an unclear and illogical exercise in determining cost allocations involving a federal loan, versus a federal government grant, for a united entity (ACC and AMM), using its combined resources to provide universal service and broadband service, all of which have been promoted by clear Congressional directives. This seems to defy common economic sense, and the public interest.

Allband, as a relatively newly-established non-profit cooperative, is governed by an essentially volunteer Board, and is run by honest employees that are striving to undertake their duties in accordance with the purposes of the USF program. For this purpose, Allband has expended significant sums in accounting and consulting firms in efforts to comply with all accounting matters and FCC rules. Allband has also strived to be proactive in cooperating with the RUS, the MPSC, the FCC, NECA and now USAC, to comply with all state and federal regulatory requirements and standards. This is an overriding reality that should not be discounted.

IV. THE COMMISSION GRANT OF AN EMERGENCY INCREASE IN PER-LINE SUPPORT TO ALLBAND, PENDING THE OUTCOME OF THE USAC REPORT, WOULD ALSO BE CONSISTENT WITH THE COMMISSION'S TRANSFORMATIONAL RULES, THE COMMISSION'S 2012 WAIVER ORDER, AND THE PURPOSES AND OBJECTIVES OF CONGRESS IN THE 1996 AMENDMENTS TO THE ACT AND RELATED SUBSEQUENT ACTS

Allband asserts that the grant of this emergency petition would be consistent with the 1996 amendments to the Federal Communications Act establishing the USF program, and with the goals and purposes of this Commission's 2011 USF reform rule-making, and with the public interest criteria for the grant of a waiver under the Commission's rules, and also with the findings found in the Commission's July 2012 order granting Allband a waiver under the rules.

A. The Commission's 2011 NPRM and Transformation Order

The Commission's 2011 NPRM indicated the purposes of its proposed reforms, in paragraph 10, which stated in relevant part:

> Consistent with the Joint Statement and the Broadband Plan, the Commission plans to be guided by the following four principles, rooted in section 254, as we proceed with USF and ICC reform:
>
> - *Modernize USF and ICC for Broadband.* Modernize and refocus USF and ICC to make affordable broadband available to all Americans and accelerate the transition from circuit-switched to IP networks, with voice ultimately one of many applications running over fixed and mobile broadband networks....
> - *Fiscal Responsibility.* Control the size of USF as it transitions to support broadband, including by reducing waste and inefficiency....

- *Accountability.* Require accountability from companies receiving support, to ensure that public investments are used wisely to deliver intended results....
- *Market-Driven Policies.* Transition to market-driven and incentive-based policies that encourage technologies and services that maximize the value of scarce program resources and the benefits to all consumers.[16]

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[16] We recognize that in some geographic areas there may be no private sector business case for offering voice and broadband services. This is not in tension with our commitment to use market-driven regulation.

The Commission's NPRM (paragraph 80) also stated in relevant part:

> Consistent with the statute and the Joint Board recommendations, we propose four specific priorities for the federal universal service high-cost program. *First*, the program must preserve and advance voice service.... *Second*, we seek to ensure universal deployment of modern networks capable of supporting necessary broadband applications as well as voice service.... *Third*, the program must ensure that rates for broadband service are reasonably comparable in all regions of the nation.... *Fourth*, we seek to limit the contribution burden on households. As we have recognized in the past, "if the universal service fund grows too large, it will jeopardize other statutory mandates, such as ensuring affordable rates in all parts of the country, and ensuring that contributions from carriers are fair and equitable."[125] [fn 125: *Qwest II Remand Order*, 25 FCC Rcd at 4087, para. 28.]

While the Commission's subsequent November 18, 2011 Transformation Order indicated an effort to increase accountability and incentives, the Order also indicated that the preservation of and promotion of communications facilities and services in unserved areas should be continued along with the promotion of broadband facilities and services in rural areas (e.g., 2011 Order, paragraphs 1-32).

The 2011 Transformation Order also established a "presumptive" $250 per-line cap for USF support on a ("one-shoe-fits all") national basis, but also established a waiver process in apparent recognition that imposition of such uniform cap would be arbitrary and inapplicable in some instances. ACC, as a newly-created entity, having just then completed a new, modern broadband capable network by 2011, in an unserved area, clearly met the criteria for the grant of a waiver as established in the 2011 Transformation Order.[14]

B. Allband has conscientiously and successfully carried out the goals of the Commission's July 2012 Waiver Order Applicable to Allband

Allband has also carried out the directives and suggestions of the 2012 Waiver Order, an effort that takes more time than an arbitrary 3-year limit given the unique circumstances and service area of Allband.

The Commission's July 20, 2016 Order contrasts greatly with the Commission's July 2012 Waiver Order, and its findings and directions included therein, and has failed to consider that Allband's activities and progress have complied fully with (and in reliance upon) the Commission's 2012 Waiver Order.

The 2012 Waiver Order found that Allband was "lean", had a small number of employees, and had modest salaries. The 2012 Waiver Order recognized the unique and difficult circumstances inherent in Allband's service area, and the important ILEC function that Allband performs in a previously unserved area. The 2012 Waiver Order also provided objectives for Allband to pursue in future years to cut costs, add lines and revenues, and to bring itself closer to the Commissions "presumptive cap" of $250 per line set on a national basis.

In its 2012 Waiver Order, the Commission granted Allband:

[14] In turn, the creation of AMM starting in 2010, and the implementation of its broadband network to commence service in 2012, pursuant to the separate RUS grant, also was fully consistent with and in compliance with the stated purposes and objectives of the 2011 Transformation Order.

[A] waiver of section 54.302 for three years to provide it additional time to take cost-cutting and revenue enhancing actions in order to improve its financial position and lessen its dependence on high-cost universal service support.

The Commission's 2012 Waiver Order (paragraph 2) stated that its 2011 USF/ICC Transformation Order, 26 FCC Rcd at 17670, para 11, imposed a "presumptive per line cap of $250 per month on total high-cost universal support for all eligible telecommunications carriers" and stated (para 4) that:

> The Commission also instituted a waiver process to allow "any carrier negatively affected by the universal service reforms … to file a petition for waiver that clearly demonstrates that good cause exists for exempting the carrier from some or all of those reforms, and that waiver is necessary and in the public interest to ensure that consumers in the area continue to receive voice service.

The Commission's 2012 Waiver Order (para 12) also found that the grant of a waiver to Allband was in the public interest:

> 12. We also find that the public interest would be served by granting a waiver for a limited period of time. Specifically, we find that the record supports Allband's claims that consumers in the area will not be able to continue to receive voice service, absent a waiver in the near-term. In reviewing Allband's financial statements, it appears that the management of Allband is mindful of its expenses and limited financial resources given the size of its business. For example, in our view, the salaries and wages of Allband's seven employees are modest.[41] Similarly, while certain other expenses, such as legal, accounting, and insurance are ongoing and an unavoidable cost of doing business, Allband's level of expenses, on a total dollar basis, are reasonable given the size and age of Allband's operation.[42] Accordingly, we find that Allband is not in a position to immediately reduce its expenses in these areas. Similarly, given the low population density in Allband's service territory, Allband also will not be in a position to increase its revenues from consumers in the short-term.

The Commission's 2012 Waiver Order (para 14) also stated in part:

> 14. Therefore, we grant Allband a limited waiver of section 54.302 of the Commission's rules for a period of three years to give Allband a sufficient but not undue amount of time to make a good faith effort to come into compliance with the $250 cap. During this time, we expect Allband to actively pursue any and all cost cutting and revenue generating measures in order to reduce its dependency on federal high-cost USF support. Specifically, we

> anticipate that Allband, during this three-year waiver period, will continue efforts to expand its subscriber base to the extent possible[44] and lower its support needs on a per-line basis, while at the same time taking all necessary steps to reduce its total costs as the company matures. We further note that Allband has expressed its willingness, if necessary, to work with RUS to rework its loan terms.[45]

ACC's track record since the 2012 Waiver Order establishes that ACC has successfully and conscientiously carried out all of the directives, goals, and suggestions included in the 2012 Waiver Order. ACC has kept its employee costs low, has cut employee costs and benefits, has strived to maintain and increase lines, pursued a federal grant under the separate ARRA program to facilitate the further expansion by AMM of broadband communications in its contiguous areas (previously unserved by such services), and constructed and operated a broadband-capable network. On and after the July 20, 2016 Order, ACC and AMM on a combined basis has cut its employees from 8 to 5, has further cut employee costs, and has been forced to stall and freeze its deployment of broadband facilities and services in its rural area.[15]

ACC also established rates well within the ranges recognized by the Commission as meeting the requirements of the Act to promote services and facilities in its rural areas which are reasonably comparable and equivalent to urban areas. Allband has also strived to keep the RUS informed of its activities and efforts, and has strived to pay its monthly payments on its RUS loan, and to develop the credibility and credit-worthiness to support a request for a modification of the loan terms, as suggested by the Commission in its 2012 Waiver Order. Allband has followed up with this effort in 2016 to seek a modification of RUS loan terms (without success so far).

Allband has also demonstrated since the grant of its waiver request in the 2012 Waiver Order (which described Allband as lean and efficient) that Allband has made further progress

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[15] The attached Affidavit of General Manager Ron Siegel summarizes several of these efforts and resulting savings (**Appendix B**, pp 11-14, paragraphs 9, and Attachments 1, 2, 3, and 4 thereto)..

(considering the area in which it serves) in reducing expenses, in seeking additional revenues, and in pursuing other avenues to reduce its per line USF support. These efforts have resulted in declines in ACC's per line costs over the years, from $615 per-line in 2013 to $434 per-line in 2015.[16] Moreover, since the July 2016 Order, Allband has further cut costs, below what is reasonable given its ILEC regulated duties and responsibilities.[17]

Allband also asserts that the grant of this Emergency Waiver Petition is necessary and in the public interest to accomplish the commitments noted earlier relative to continued payment of RUS loan obligations and to continue to provide ILEC services in its territory, while Allband continues to strive to further reduce its per-line costs and USF reimbursements.[18]

C. Subsequent FCC Orders

The Commission's 2012 Waiver Order also established a process for Allband to request, with supporting documentation, a further waiver beyond the 3-year period granted in the 2012 Waiver Order. Allband did file such a Petition for a Further Waiver in December 2014, which was granted in an Order issued on June 29, 2015.

On December 7, 2015, the Chief of the Wireline Competition Bureau issued an order "on an interim basis" to extend the waiver granted to Allband "...for an additional six months until the

[16] Affidavit of ACC General Manager Siegel, **Appendix B**, pp 12-13 and Attachment 3 thereto.

[17] Before the July 2016 Order, Allband Communications Cooperative and Allband Multimedia had 8 employees on a combined basis; compared to 5 employees since July. This reduction hampers the quality of service, stifles efforts at increasing lines and public services, and is counterproductive to the purposes and objectives of the USF.

[18] Allband also has strived to pay its RUS loan that is funded by federal taxpayers. Allband has successfully made its RUS loan payments since the inception of its loan (see payment history and loan amortization attached to Affidavit of Allband Controller Tammy Veasy, **Appendix C**, pp 4-5, and Attachments 1 and 2 thereto). This RUS loan was used entirely to fund the planning, engineering, and construction of ACC's network as entirely a regulated ILEC entity. The monthly loan payments are $54,147.17 per month, which equates to an obligation of $334 per-line per month. The $250 per-line support caps imposed by the Commission's July 20 Order falls considerably short of even covering Allband's monthly payments on its RUS loan.

earlier of either June 30, 2016 or the date on which further action is taken on the pending waiver request, without prejudice to the ultimate determination as to whether relief is warranted." This Order recited several of the findings or rulings in the Commission's USF/ICC Transformation Order, 26 FCC Rcd 17663 (2011), and the Commission's *Fifth Order on Reconsideration*, 27 FCC Rcd 14549 (2012):

> In the *Fifth Order on Reconsideration*, the Commission further clarified that "we envision granting relief to incumbent telephone companies only in those circumstances in which the petitioner can demonstrate that consumers served by such carriers face a significant risk of losing access to a broadband-capable network that provides voice as well as broadband today, at reasonably comparable rates, in areas where there are no alternative providers of voice or broadband. [fn omitted].

The 2015 Order also recited events prior to issuance of that Order including: (1) the July 25, 2012 Order granting Allband a three-year waiver; (2) Allband's December 31, 2014 Petition for Further Waiver with attachments, including Allband's 2012 and 2013 audited financial statements; and Allband's subsequent 2014 audited financial statements filed on May 18, 2015; (3) the June 29, 2015 Order issued by the Bureau extending Allband's July 2012 Waiver:

> [O]n an interim basis for six months until the earlier of either December 31, 2015 or the date on which further action was taken on the pending Further Waiver Request, without prejudice to the ultimate determination as to whether relief is warranted.[17]

which Order:

> [A]lso directed the Universal Service Administrative Company (USAC) to undertake inquiries on certain accounting issues and report its findings to the Bureau."

and (4) USAC's October 23, 2015 "memorandum summarizing the results of its inquiries into the record..." and Allband's "response to the USAC Memorandum."

The December 7, 2015 Order thereupon extended Allband's waiver "until the earlier of either June 30, 2016, or the date on which further action is taken on Allband's Further Waiver Petition" to permit "further Bureau analysis" concerning USAC's Memorandum and Allband's response thereto.

Before and after the issuance of the October 2015 USAC memorandum and Allband's November 2015 Response thereto, Allband General Manager Ron Siegel on several occasions tried to communicate with USAC to cooperate in information exchanges to clarify and assist the audit, but without success. By May 2016, having been rebuffed by USAC in these efforts, Allband turned to preparing further analysis and to provide same to the FCC Staff in accordance with FCC procedures, and to further support a further extension of Allband's waiver. This Allband analysis was provided at meetings held with the FCC Staff on June 28, 2016, and is described in Allband's Notice of Ex Parte filings and meetings. Allband also met with the Staff of the RUS to keep RUS fully informed.[19]

On June 29, 2016, Allband also filed an Emergency Petition for Further Waiver to request a further interim extension of its waiver.

On July 20, 2016, the Commission issued its Order and Order on Review. In this Order, the Commission: (1) denied Allband's December 31, 2014 Petition for Further Waiver of Section 54.301 of the Commission's Rules; (2) denied Allband's August 24, 2012 Application for Review of the Wireline Competition Bureau's July 25, 2015 Waiver grant; and (3) denied Allband's June 29, 2016 Emergency Petition for Further Extension of its Waiver of Section 54.301 of the Commission's Rules. The Commission's Order (paragraphs 30 and 33) states in part:

> For example, since the Bureau granted Allband a waiver in 2012, Allband is now earning substantial revenues through AMM that it was not earning in 2012. A

[19] Affidavit of General Manager Ron Siegel, **Appendix B**, and his Attachment 6 hereto.

> waiver of section 54.302 is only in the public interest to the extent that a carrier's costs exceed the $250 per line per month. [paragraph 30].
>
> * * *
>
> Once Allband has revised its cost accounting practices to be consistent with our rules, Allband may submit a new request for waiver of the $250 cap if its revised cost study incorporating correctly determined costs would result in support in excess of $250 per line. (paragraph 33).

Allband asserts that this Emergency Petition is ripe for immediate action by the Commission, so as to grant a partial interim waiver and increase in per-line support to $375 per-line. Allband has established herein that it qualifies for the $375 per-line USF support to cover fixed costs having nothing to do with USAC's ongoing review as ordered by the FCC in its July 20, 2016 Order. Allband has also established in its attached affidavits that it has virtually exhausted all of its financial reserves derived from both ACC and AMM on a combined basis, and that it soon will no longer be able to continue its services or to pay its RUS loan. An emergency partial interim increase in the waiver of the per-line cap is thus justified as being supported by undisputed facts, and is urgent to avoid irreparable injury to Allband. This Emergency Petition, with attached Affidavits and analysis (**Appendices A through E** hereto) also demonstrates that Allband has conscientiously and successfully strived to comply with the Commission's waiver orders, and to comply with the Commission's accounting rules, and importantly, to work with USAC to ensure compliance with the Commission's accounting rules.

VI. CONCLUSION AND RELIEF

Allband requests the Commission to grant this Emergency Petition for an Interim Partial Waiver of the Part 54.302 Rule and For Increased Per-Line USF Support, and to issue its Order: (1) granting an immediate increase in Allband's USF support to $375 per-line; (2) ordering USAC to complete and issue its report on a prompt basis, with an adequate opportunity for Allband to file a response to any USAC report and memorandum; and (3) granting Allband a further increase in USF per-line support above the base level of $375 per line upon review of the USAC Report and Allband's response thereto. Allband requests such further and consistent relief that is lawful, reasonable and equitable.

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Respectfully Submitted,

ALLBAND COMMUNICATIONS COOPERATIVE

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